

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID L. NOLAN, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 06 C 5615
)	
MIDWEST GENERATION LLC,)	
)	
Defendant.)	

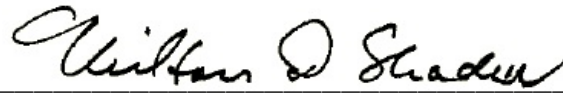
MEMORANDUM ORDER

Midwest Generation LLC ("Midwest"), the sole remaining defendant in this putative class action, has filed its Answer to the First Amended Complaint ("FAC") brought against it by David Nolan and Keith Suski, who seek to sue individually and on behalf of all similarly situated persons. This memorandum order is issued sua sponte to address some matters raised by that pleading in response to the FAC.

To begin with, Midwest has twice impermissibly employed the locution that a document "speaks for itself" instead of responding as it must to the FAC's allegations--in that respect, see App. ¶3 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 278 (N.D. Ill. 2001). Accordingly Answer ¶¶6 and 29 are stricken, but with leave granted to Midwest to file an amendment to its Answer (not a full-blown amended Answer) on or before February 23, 2007 that is properly responsive to FAC ¶¶6 and 29.

More importantly in substantive terms, the Answer makes it

plain that it is hotly contested whether this action may or may not generally be maintained as a class action under Fed. R. Civ. P. 23, as well as whether the action comes within CAFA coverage (see FAC ¶10). Those questions should certainly be decided early on so as to shape the scope of discovery and other matters. It would thus seem that the currently-scheduled next status hearing date of March 29 is too far out, and this Court invites either or both counsel to bring the two subjects referred to in this paragraph on for consideration by motion well before that date.

A handwritten signature in black ink, reading "Milton I. Shadur". The signature is written in a cursive, flowing style. The first name "Milton" is written with a large, stylized 'M' and 'I'. The last name "Shadur" is written with a large 'S' and 'H'. The signature is positioned above a horizontal line.

Milton I. Shadur
Senior United States District Judge

Date: February 13, 2007